

A55.A

THIS AMENDMENT TO LEASE AND OPERATING AGREEMENT
 ("Amendment") made this 2ND day of October, 1989, by and
 between PHILADELPHIA PORT CORPORATION, a Pennsylvania non-profit corporation ("PPC"), and HOLT CARGO SYSTEMS, INC., a Delaware Corporation ("Holt"),

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FEDERAL MARITIME
COMMISSION
OFFICE OF THE SECRETARY

WITNESSETH:

WHEREAS, PPC and Holt entered into a Lease and Operating Agreement for Packer Avenue Marine Terminal dated March 30, 1989, which Lease and Operating Agreement has been amended by the following agreements filed with the Federal Maritime Commission ("FMC"): Agreement Nos. 224-2002333-001 and 224-200233-002, both effective May 12, 1989; Agreement No. 224-200233-003, effective May 16, 1989; and Agreement No. 224-200233-004, effective June 28, 1989 (the Lease and Operating Agreement, as so amended, is hereinafter referred to as the "Agreement");

WHEREAS, capitalized terms used herein but not defined herein shall have the meaning ascribed thereto in the Agreement;

WHEREAS, PPC is the tenant, under the Consolidated Lease and the Port Improvements Lease, of a portion of the Port

Facilities adjacent to the Terminal, commonly known as Berth 6 and Building 6, being the area designated as Section "B" on Exhibit A to the Agreement ("Berth 6");

WHEREAS, PPC desires to lease Berth 6 to Holt, and Holt desires to lease Berth 6 from PPC, subject to the terms and conditions of the Agreement, as amended hereby; and

WHEREAS, the Commonwealth and the City have consented to the amendment of the Agreement to provide for the leasing of Berth 6 to Holt and are joining in this Amendment for the limited purposes set forth on the signature page hereof.

NOW, THEREFORE, in consideration of the mutual terms, covenants, provisions and conditions herein set forth, and intending to be legally bound hereby, the parties hereto agree as follows:

1. This Amendment shall become effective on the last to occur of (i) October 3, 1989, (ii) the date an executed copy of this Agreement is filed with the FMC in accordance with the Shipping Act of 1984 and (iii) the date that both the City and the Commonwealth grant their written approval and join herein for the purposes set forth on the signature pages of this Amendment (hereinafter the "Berth 6 Effective Date"). PPC shall cause this Amendment to be filed with the FMC promptly following execution.

In the event that either the City or the Commonwealth fails to provide such written approval or joinder within ten (10) business days of the execution of this Agreement, either PPC or Holt may terminate this Amendment by notice in the manner provided in the Agreement.

2. Effective as of the Berth 6 Effective Date, PPC hereby leases Berth 6 to Holt, and Holt hereby leases Berth 6 from PPC, subject to the terms and conditions hereof. As of the Berth 6 Effective Date, Berth 6, including all buildings, fixtures and structures located thereon, as the same may be subsequently modified pursuant to Section 7.8 of the Agreement, shall be included within the "Terminal" as defined in Section 1.1 of the Agreement.

3. PPC shall not be liable to Holt in any respect in the event that PPC is unable to deliver possession of Berth 6 to Holt on or before October 3, 1989, because of the refusal of prior licensees or tenants to vacate; provided, however, that in the event any current licensee or tenant refuses to vacate Berth 6, PPC shall use diligent efforts to remove such licensee or tenant, including the institution of appropriate legal proceedings, and further provided that until such time as PPC delivers possession of Berth 6, Holt's obligations and covenants with respect to Berth 6 other than under Section 4.1 and 11.1 of the Agreement shall not commence.

4. Section 3.1(b) of the Agreement is deleted in its entirety, and the following provision is substituted therefor:

(b) Breakbulk/Non-Container Usage. A breakbulk fee (the "Breakbulk Fee") in an amount equal to the product of the applicable Breakbulk Rate as set forth on Exhibit E, attached hereto and made a part hereof, multiplied by the number of tons of breakbulk and non-container cargo or materials, excluding bulk cargo and Steel (as hereinafter defined), moved onto or off any and all vessels at the Terminal during the preceding month, and a Steel fee (the "Steel Fee") in an amount equal to the sum of (i) the product of \$.75 per ton of Steel multiplied by the number of tons of Steel moved onto or off any and all vessels at the Terminal during the preceding month (up to and including 400,000 tons in any Lease Year), plus (ii) the product of \$.50 per ton of Steel multiplied by the number of tons of Steel moved onto or off any and all vessels at the Terminal during the preceding month (for all Steel tonnage in excess of 400,000 tons in any Lease Year). The term "Steel" as used in this Agreement shall mean steel, iron, aluminum, zinc, copper and other metal ingots, sheets, rods, bars, coils and similar products.

5. Section 3.1(d) of the Agreement is deleted in its entirety and the following provision is substituted therefor:

(d) Additional Guarantee. Holt hereby guarantees payment to PPC, in addition to the Minimum Annual Payment and the Gross Receipts Fee (as hereinafter defined), of the following annual sums: (i) commencing on the Berth 6 Effective Date and continuing for each Lease Year thereafter during the Term hereof, the amount of Three Hundred Thousand Dollars (\$300,000) (the "Berth 6 Additional Guarantee") and, (ii) commencing in the third Lease Year of this Agreement and continuing for each Lease Year thereafter during the Term hereof, an additional amount of Six Hundred Thousand Dollars (\$600,000) (the "Original Additional Guarantee"). The Berth 6 Additional Guarantee and the Original Additional Guarantee are hereinafter collectively referred to as the "Additional Guarantee." Container Pick Fees (in excess of the Minimum Annual Payment), Breakbulk Fees, Steel Fees, and Intermodal Fees shall be credited against the Berth 6 Additional Guarantee, and amounts of such fees in excess of \$300,000 shall be credited against the Original Additional Guarantee. Such fees shall not abate, however, upon payment of the Minimum Annual Payment and the Additional Guarantee. To the extent not previously paid to PPC pursuant to the monthly payments set forth in Sections 3.1(a), 3.1(b) and 3.1(c), Holt shall pay the balance of the Additional Guarantee due to PPC for a given Lease Year on the fifteenth day of the following Lease Year. The Berth 6 Additional Guarantee shall be prorated on a per diem basis for the Lease Year in which the Berth 6 Effective Date occurs.

6. Section 3.1(f) of the Agreement is hereby amended by inserting "the Steel Fee," in the first sentence thereof following "the Breakbulk Fee".

7. The first sentence of Section 3.4 of the Agreement is hereby amended by inserting "(other than Steel)" following the word "Breakbulk" and by inserting "the tonnage of Steel handled," following the word "handled".

8. Section 4.4 of the Agreement is deleted in its entirety and the following provisions are substituted therefor:

4.4. Activity Performance Evaluations. As soon as practicable but (provided that Holt has provided on a timely basis all information, reports, VARs and other data as Holt is required to provide to PPC) not later than sixty (60) days following the fourth and eighth anniversaries of the first day of the first Lease Year, PPC shall review Holt's performance with respect to the activity guarantees set forth in Exhibit G hereof and Section 4.4A (the "Activity Guarantees") and deliver a written report to Holt with respect thereto (the "Activity Review"). PPC shall have the option to terminate this Agreement upon thirty days' written notice, without any opportunity to cure, if either of such Activity Review shows that for the four Lease Year period prior to such review:

(a) HOLT has failed to generate activity at the Terminal equalling at least 85% of the cumulative container pick guarantees and in addition HOLT has failed to generate cargo activity at the Terminal providing at least 75% of the cumulative Additional Guarantee; or

(b) HOLT has failed to generate activity at the Terminal providing at least 65% of the cumulative container pick guarantees; or

(c) HOLT has failed to generate cargo activity at the Terminal providing at least 60% of the cumulative Additional Guarantee. HOLT shall have the option to terminate this Agreement upon thirty (30) days' written notice to PPC following the completion of PPC's Activity Review (or if PPC has not submitted an Activity Review, then within thirty (30) days after the last date the Activity Review was due), if for the four-Lease Year period consisting of Lease Years 1 through 4, or for the four-Lease Year period consisting of Lease Years 5 through 8, HOLT has failed to generate activity at the Terminal equalling the amounts set forth in subsections (a), (b) or (c), above. In the event either HOLT or PPC does not exercise its option to terminate within thirty days (30) following the completion or last due date, whichever is applicable, of PPC's Activity Review with respect to the activity guarantees, their respective rights to terminate this Agreement under this Section 4.4 with respect

to such review period shall immediately and irrevocably terminate.

4.4A. Steel Activity Performance Evaluation.

Concurrently with and as a part of the Activity Review described in Section 4.4, PPC shall review Holt's performance with respect to the tonnage of Steel handled at the Terminal. PPC shall have the option to terminate Holt's rights under this Agreement with respect to Berth 6 only upon thirty days' written notice, without any opportunity to cure, if either of such Activity Review shows that for the four Lease Year period prior to such review Holt has failed to generate steel tonnage activity at the Terminal equalling an average of 300,000 tons of Steel per Lease Year (which Steel tonnage activity requirement shall be prorated on a per diem basis for the initial Lease Year). In the event that Holt's rights with respect to Berth 6 are terminated, (i) Holt's obligation to pay the Berth 6 Additional Guarantee shall terminate, (ii) the definition of "Terminal," Section 3.1(d), Section 4.4, the first sentence of Section 7.8(b)(ii), and Exhibit G of the Agreement shall revert to their form immediately preceding the Berth 6 Effective Date, (iii) Section 4.4A and 7.7(k) shall be deleted, and (iv) the second sentence of Section 7.8(b)(ii) shall be amended by deleting "Original" therefrom.

8A. Exhibit G to the Agreement is deleted in its entirety and the Exhibit G attached hereto, dated September 29, 1989, is substituted therefor.

9. Section 7.7 of the Agreement is hereby amended by inserting the following Subsection (k):

(k) In addition to the foregoing requirements, Holt shall not construct, effect major repairs or restorations of, alter or demolish any works, structures or other improvements upon Berth 6 without first obtaining PPC's written approval of the identity of the contractor (unless Holt or a Holt affiliate acts as the general contractor), which approval shall not be unreasonably withheld. Holt shall have the right to salvage any structural steel and other salvageable materials from any demolition on the Terminal and use such salvaged materials in connection with improvements on Berth 6.

10. The City and the Commonwealth, by joining in this Amendment for the limited purposes set forth on the signature page hereof, as fee and leasehold owner of Berth 6, as their respective interests may appear, consent (a) to the repairs, restorations, alterations and demolition by Holt which PPC may from time to time approve under section 7.7, and (b) to the work to be performed by or on behalf of PPC as described in Section 12 of this Agreement, to the extent required under the Consolidated

Lease, the Port Improvements Lease, or the Commonwealth Sublease, or in any other instrument, lease or agreement.

11. The first sentence of Section 7.8(b)(ii) of the Agreement is amended by deleting therefrom "the Additional Guarantee" and substituting therefor "the Original Additional Guarantee", and the second sentence thereof is amended by inserting "the Steel Fees, the Berth 6 Additional Guarantee," following "the Breakbulk Fees".

12. PPC agrees that no later than June 30, 1990, it shall have completed: (i) the dredging of Berth 6 to a depth of forty (40) feet from MLWD, and (ii) the repair of roof leaks in the Berth 6 shed and the repair of all inoperative doors and all ripped/sheared siding that existed at the Berth 6 shed on the Berth 6 Effective Date so that the Berth 6 shed can be used for its intended purpose. In addition to the more permanent repairs described in the preceding sentence, PPC shall make interim repairs to all roof leaks on the Berth 6 shed within 30 days of the Berth 6 Effective Date, and shall promptly commence the temporary repair of all inoperative doors and damaged siding on the Berth 6 shed in order that the shed may be used for its intended purpose. Except as set forth in the preceding two sentences and except as to latent structural defects, Holt agrees to accept Berth 6 in its "as is" condition as of the Berth 6 Effective Date, without any representations or warranties,

expressed or implied whatsoever with respect thereto, and Holt's occupation or use of Berth 6 shall in itself constitute acknowledgment that Berth 6 is in a condition acceptable to Holt. The provisions of this Section 12 and not Section 14.1 of the Agreement apply to the condition of Berth 6 on the Berth 6 Effective Date.

13. References to the first day of the First Lease Year in Article X of the Agreement shall for the purposes of Berth 6 be deemed references to the Berth 6 Effective Date. Promptly after the Berth 6 Effective Date, PPC at its cost will remove or cause to be removed all drums, trash and other debris and personal property from Berth 6.

14. At the time of the execution of this Amendment, as a condition to PPC's obligations hereunder, Holt shall deliver to PPC an opinion of counsel stating that this Amendment has been duly authorized, executed and delivered by Holt. At the time of the execution of this Agreement, and as a condition to Holt's obligations hereunder, PPC shall deliver to Holt an opinion of counsel stating that this Agreement has been duly authorized, executed and delivered by PPC.

15. Section 28.1 of the Agreement is amended by deleting therefrom "George E. Moore, Esquire" and substituting therefor "Thomas R. Eshelman, Esquire."

16. HOLT and PPC confirm that the first day of the first Lease Year under the Agreement was April 1, 1989.

17. In consideration of certain move-in expenses that HOLT will be required to incur in connection with the commencement of HOLT's occupancy of Berth 6, PPC agrees to grant HOLT a move-in allowance in an amount and to be credited as determined by the parties following the Berth 6 Effective Date.

18. Holt agrees to reimburse PPC, within thirty (30) days of presentation of a statement or statements therefor, for all reasonable attorneys' fees and related expenses incurred by PPC in connection with the negotiation and preparation of this Amendment.

19. Section 2.5 of the Agreement is hereby amended by inserting the following second sentence: "No termination shall be effective until notice thereof has been filed with the FMC."

20. Section 4.8(b) of the Agreement is deleted in its entirety and the following provisions is substituted therefor:

"(b) For a period of one (1) year following the termination or expiration of this Agreement, HOLT shall not solicit for competing facilities of HOLT any liner service customer (whether bulk, breakbulk, container or Steel) or

Steel supplier or manufacturer chartering vessels for the carriage of Steel which called at the Terminal during the year prior to such termination or expiration, except for those liner service customers or Steel suppliers or manufacturers chartering vessels for the carriage of Steel which were, with respect to liner service customers, current customers of HOLT calling at Gloucester City, New Jersey, on March 30, 1989 and which are listed on Exhibit H attached hereto and made a part hereof, or, with respect to such Steel suppliers or manufacturers, were current customers of Holt calling at Gloucester City, New Jersey, on June 1, 1989 and which are listed on Exhibit H-1 attached hereto and made a part hereof.

21. Except as amended hereby, the Agreement is unmodified and remains in full force and effect. Without limiting the generality of the foregoing, Holt ratifies and confirms the warrant of attorney set forth in Section 19.1 of the Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

[Corporate Seal]

PHILADELPHIA PORT CORPORATION

Attest: David A. Drumbly

By: [Signature]

[Corporate Seal]

HOLT CARGO SYSTEMS, INC.

Attest: [Signature] Sec'y

By: [Signature]
v.p.

JOINDER BY COMMONWEALTH OF PENNSYLVANIA

The Commonwealth of Pennsylvania joins in the foregoing Amendment solely for the purpose of consenting to the inclusion of Berth 6 within the Terminal leased to Holt Cargo Systems, Inc. ("Holt") by Philadelphia Port Corporation ("PPC") pursuant to the lease and operating agreement for Packer Avenue Marine Terminal dated March 30, 1989 (the "Agreement") as contemplated by the foregoing Amendment, and granting non-disturbance to Holt pursuant to Section 1.11 of the Agreement with respect thereto, consenting to repairs, restorations, alterations and demolition by Holt which PPC may from time to time approve with respect to Berth 6 under Section 7.7 of the Agreement, and consenting to the work to be performed by or on behalf of PPC as described in Section 12 of the foregoing Amendment.

THE COMMONWEALTH OF PENNSYLVANIA

JOINDER BY CITY OF PHILADELPHIA

The City of Philadelphia joins in the foregoing Amendment solely for the purpose of consenting to the inclusion of Berth 6 within the Terminal leased to Holt Cargo Systems, Inc. ("Holt") by Philadelphia Port Corporation ("PPC") pursuant to the lease and operating agreement for Packer Avenue Marine Terminal dated March 30, 1989 (the "Agreement") as contemplated by the foregoing Amendment, and granting non-disturbance to Holt pursuant to Section 1.11 of the Agreement with respect thereto, consenting to repairs, restorations, alterations and demolition by Holt which PPC may from time to time approve with respect to Berth 6 under Section 7.7 of the Agreement, and consenting to the work to be performed by or on behalf of PPC as described in Section 12 of the foregoing Amendment.

THE CITY OF PHILADELPHIA

Approved as to Form

Seymour Kurland, City Solicitor

By: _____

EXHIBIT G

ACTIVITY GUARANTEES

The Activity Guarantees are a combination of the Container Pick Guarantee and the Additional Guarantee applicable in the appropriate Lease Year, as shown below.

<u>Lease Year</u>	<u>Container Pick Guarantee(1)</u>	<u>Additional Guarantee(2) (3)</u>
1	35,000	\$150,000
2	50,000	\$300,000
3	60,000	\$900,000
4	60,000	\$900,000
5	60,000	\$900,000
6	60,000	\$900,000
7	60,000	\$900,000
8	60,000	\$900,000
9	60,000	\$900,000
10	60,000	\$900,000

- (1) Each move of a container (loaded or unloaded) onto or off any vessel at the Terminal, excluding restows, is credited toward the Container Pick Guarantee. The Container Pick Guarantee increases by 15,000 container moves in the Lease Year in which all of the Capital Improvements are completed (prorated pursuant to Section 3.1(a)) and shall, subject to further increase as provided herein, continue at such adjusted rate for each Lease Year thereafter. Whether or not the Capital Improvements are completed, the Container Pick Guarantee increases by 15,000 container moves in the Lease Year in which the ICTF becomes operational and shall, subject to further increase as provided herein, continue at such adjusted rate for each Lease Year thereafter.
- (2) Each activity that generates a Container Pick Fee (other than the number of container moves needed to fulfill the Container Pick Guarantee), Breakbulk Fees, Steel Fees, or Intermodal Fees is credited toward the Additional Guarantee at the rate applicable to such activity. The Additional Guarantee is expressed as a cumulative dollar amount of such activities at the applicable rates.
- (3) Assumes a Berth 6 Effective Date of October 1, 1989. If the Berth 6 Effective Date is delayed, the Additional Guarantee for the first Lease Year shall be prorated in accordance with this Agreement.

EXHIBIT H-1

Hyundai Merchant Marine	Tokai
USX	Toko
Hogoovens	Netubulk
Franco Steel	Duferco
Cargill Ferrous Intl.	Daval
British Steel	Ferbra Int.
Ektrade	USSI
Coutinho, Caro	Nebam
Lukens Steel	